

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAYAKUMAR SUNDARAN NAIR et al.,

Plaintiffs,

v.

ALEX TOTH et al.,

Defendants.

CASE NO. 2:23-cv-00454-TL

ORDER DENYING MOTION TO
RECONSIDER

This matter is before the Court on Defendant Dean Kalivas's Motion for Reconsideration. Dkt. No. 29. Mr. Kalivas asks the Court to reconsider its order denying his request to cancel *lis pendens*. Dkt. No. 28. The Court DENIES the motion for reconsideration.

The Court dismissed this case without prejudice on August 30, 2023. On September 28, 2023, Plaintiffs filed a motion to reconsider the Court's order of dismissal, which was eventually denied. *See* Dkt. Nos. 17, 19. The same day, Plaintiff Jayakrishnan Nair referenced this case as cause for encumbering the title of two properties that are claimed to be at issue in this matter pursuant to RCW 4.28.320. Dkt. No. 24 at 1–2. Plaintiffs then appealed this case to the Ninth

1 Circuit on November 20, 2023 (Dkt. No. 20), which is still pending. On December 4, 2023,
2 Mr. Kalivas filed an ex parte motion to cancel the *lis pendens* encumbering the titles for the two
3 properties. Dkt. No. 24. That motion was denied. Dkt. No. 28. Mr. Kalivas now asks the Court to
4 reconsider its order denying that motion. Dkt. No. 29.

5 In this district, “[m]otions for reconsideration are disfavored” and must “be filed within
6 fourteen days after the order to which it relates is filed.” LCR 7(h)(1)–(2). Filing an untimely
7 motion “may be grounds for denial.” *Id.* at 7(h)(2); *see also* Judge Tana Lin, Standing Order for
8 All Civil Cases, Section III.A (last updated May 2, 2024) (“Untimely briefs or responsive
9 pleadings may be summarily denied, stricken, or ignored.”). Motions for reconsideration should
10 be granted only in “highly unusual circumstances.” *Marlyn Nutraceuticals, Inc. v. Mucos*
11 *Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009) (quoting 389 *Orange St. Partners v.*
12 *Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)). “Whether or not to grant reconsideration is
13 committed to the sound discretion of the court.” *Navajo Nation v. Confederated Tribes & Bands*
14 *of the Yakima Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003) (citing *Kona Enters., Inc. v.*
15 *Est. of Bishop*, 229 F.3d 877, 883 (9th Cir. 2000)).

16 The instant motion for reconsideration is untimely. The Court entered its order denying
17 the request to cancel *lis pendens* on March 26, 2024. Dkt. No. 28. Pursuant to LCR 7(h)(2), the
18 motion to reconsider must have been filed by no later than April 9, 2024. Instead, Mr. Kalivas
19 filed this motion on April 23, 2024, and does not address its lateness or provide any good-cause
20 justification for excusing its untimeliness. *See* Dkt. No. 29. The Court therefore DENIES the
21 untimely motion.

22 While the Court decides this motion on narrower procedural grounds, the motion was
23 unlikely to succeed on the merits. “Motions for reconsideration are disfavored” and are typically
24 denied absent “a showing of manifest error in the prior ruling or a showing of new facts or legal

1 authority which could not have been brought to [the Court’s] attention earlier with reasonable
2 diligence.” LCR 7(h). Motions for reconsideration do not “provide litigants with a second bite at
3 the apple. . . . [and] should not be used to ask a court to rethink what the court had already
4 thought through—rightly or wrongly.” *Rapp v. Naphcare, Inc.*, No. C21-5800, 2023 WL
5 4443936, at *1 (W.D. Wash. June 23, 2023) (quoting *Gaskill v. Travelers Ins. Co.*, No. C11-
6 5847, 2012 WL 13026638, at *1 (W.D. Wash. Mar. 28, 2012)).

7 Here, Mr. Kalivas does not assign error to the Court’s prior order. Instead, he asserts two
8 additional grounds—not previously raised—upon which he argues the Court could also rely to
9 cancel the *lis pendens*. Dkt. No. 29 at 1. He does not, however, discuss or explain why he failed
10 to raise these grounds in his prior motion. “A motion for reconsideration ‘may not be used to
11 raise arguments or present evidence for the first time when they could reasonably have been
12 raised earlier in the litigation.’” *Marlyn Nutraceuticals*, 571 F.3d at 880 (emphasis in original)
13 (quoting *Kona Enters.*, 229 F.3d at 890).

14 Consequently, the Court DENIES the motion for reconsideration. Dkt. No. 29.

15 Dated this 7th day of June 2024.

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17 _____
18 Tana Lin
19 United States District Judge
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